



The State Senate
Senate Research Office
204 Legislative Office Building
18 Capitol Square
Atlanta, Georgia 30334

Bill Littlefield
Managing Director

Martha Wigton
Director

Telephone
404/ 656 0015

Fax
404/ 657 0929

UPCOMING ISSUES FOR THE 2003 LEGISLATIVE SESSION

This document is a report of selected issues that are likely to be addressed during the 2003 Session of the Georgia General Assembly, and is solely intended to provide a general overview. If more information on a particular area of interest is needed, please contact the Senate Research Office. This document is available on the Senate Research Office Internet Website at: www.state.ga.us/senate/senresearch.html

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UPCOMING ISSUES FOR THE 2003 LEGISLATIVE SESSION

APPROPRIATIONS

NATIONAL OVERVIEW

Options continue to dwindle for budget writers as an aggregate \$50 to \$60 billion deficit is estimated for states in the coming year, adding insult to the \$37 billion injury felt by declining state revenues last year. Moreover, most publications tracking state budgets appear to agree that a majority of states have exhausted the “easy” solutions for balancing the books: cutting travel and position vacancies; implementing hiring freezes; using Tobacco Settlement and rainy day funds; leveraging cash from specialized accounts; delaying or bonding capital projects; and cutting non-essential services and projects. Some states have resorted to even more aggressive measures such as lay-offs and furloughs, office and institution closures, and essential service and benefit reductions. The National Conference of State Legislatures reports that in preliminary Fiscal Year 2003 spending plans, at least 26 states cut funding. As states near the mid-year mark, 26 states have already lowered their revenue estimates and 29 states report current budget overruns. All but a handful of budget officers responding to a November 2002 National Conference of State Legislatures’ survey ranked the current fiscal outlook for their state as “concerned” or “pessimistic.” To date, four states have already gone into a special session to address Fiscal Year 2003 shortfalls.

GEORGIA OVERVIEW

Although Georgia’s current budget gap of roughly 3.1 percent is less than the 3.6 percent national average, Georgia continues the journey across the bottom of the bell curve toward economic recovery; September revenue for the state showed the only positive collections in the past sixteen months. The most recent figures for Fiscal Year 2003 show First Quarter revenue is down 6.6 percent or -\$277.4 million from last year’s collections. It is noteworthy that using the prior year’s receipts as a comparison is a one-dimensional benchmark of the economic landscape; collections for Fiscal Year 2002 were also down from the year before by 6.4 percent or -\$291.9 million. In the big picture, the state is realizing almost \$600 million less in funds than it had two years ago.

Before Fiscal Year 2003 began, budget writers for Georgia continued to struggle to gain a financial footing. A “hold-back” of 1 percent for most departments was incorporated into Governor Barnes’ veto message when the appropriations bill was signed, and additional instructions were issued by the Office of Planning and Budget (OPB) that required another 2 percent reduction with some exemptions for child protective services and education. By November, more instructions for identifying an additional 2 percent for potential cuts were distributed - a grand total of 5 percent for the year. This last call for reductions was issued without exemptions, which brings the 40 percent of the state’s budget for education in grades Kindergarten to 12 to the table.

The Office of Planning and Budget is writing the Amended Fiscal Year 2003 and Fiscal Year 2004 budget proposals at this time, and agencies have submitted over \$760 million in additions and enhancements for the amended budget and \$1.1 billion for Fiscal Year 2004. Without the official year-end “*Report of the State Auditor*,” OPB has identified about \$173 million in unused and frozen funds to fill the 2003 amended requests. The availability of funds in 2004 will depend on the changes made in 2003 and the Governor’s Revenue Estimate.

COST-DRIVERS

Medicaid appears to be, not only in Georgia, but in the nation as a whole, the biggest cost-driver in state Fiscal Year 2003 and 2004 budgets. Twenty years ago, Medicaid absorbed 10 percent of state finances but will account for 25 percent of state funds by 2005. With double-digit percentage increases in inflationary costs exacerbated by double-digit percentage increases in eligibility, 24 states report that Medicaid and health care programs are already over budget for Fiscal Year 2003. Despite a small increase in the federal medical assistance percentage (FMAP), Georgia’s Medicaid shortfall of roughly \$416 million still accounts for the lion’s share of the requests by agencies for additional funds. It is likely that any additions to the budget in health services will not be used for expansions,

but rather to maintain as many services as possible at their current levels and to accommodate the increases in utilization that are inherent in times of recession.

An enrollment surge in post-secondary education programs, also linked to the recession, comprise the second largest demand on available funds this budget cycle. As displaced workers seek to expand their job skills to return to the workforce with a more marketable resume, higher education institutions in the University System and the Department of Technical and Adult Education will be expected to meet the demand. An immediate impact will be reflected in an increase in Lottery funds for the HOPE Scholarship and capital outlay requests for facility renovations and construction. Nearly half of the \$2 billion in requests for capital outlay this year are in post-secondary education (\$916 million).

REVENUE CONSIDERATIONS

Even though Georgia has been flattening expenditures through cuts to the base budgets for the past two fiscal years, there will be pressure to use a portion of the \$740 million Reserve Shortfall Reserve (RSR) to prolong the stability of services and programs. While some states, like Georgia, have resisted using reserves at the onset of the recession, 19 states did use rainy day funds to close gaps in Fiscal Year 2002 and 12 states drew on their savings at the onset of 2003. The decline in the number of states using shortfall withholdings at the start of this fiscal year is directly attributed to the fact that some states made such large draws or completely depleted their reserves at the beginning of the recession so that additional withdrawals are no longer an option. Reserves have been completely expended for at least two of the four states that had special budget sessions this fall. The percentage of any draw Georgia makes on Revenue Shortfall Reserve will have to be measured against the need for additional funds in succeeding fiscal years to sustain priority functions and meet additional emergency needs during the state's economic recovery. Other out-lying state funds may be reviewed for availability. Tobacco Funds, for example, were redirected to balance shortfalls in 12 states in Fiscal Year 2002 and 16 states in Fiscal Year 2003. Road, disaster, capital outlay, historic preservation and a variety of other usually designated accounts were used by other states to salve deficits and may offer ideas for temporary fixes to Georgia's budget writers.

In addition to one-purpose fund sources, there may be discussion on expanding existing revenue streams. More than half of the states have raised revenue through increased fees. The predominant target has been driver's licenses, but park admissions, court fines, copies of vital records, corporate license renewals and a host of other surcharges have been approved in at least 26 other states. Tuition increases have been expansive; at least 11 states' university systems raised tuition rates to compensate, in part, for the loss of state financial support.

Certainly, the least favorite and most unlikely alternative is to increase taxes if collections cannot support the state's funding priorities. For the first time since 1994, states delayed implementing tax cuts, approved tax increases, and extended or approved or one-time tax hikes to generate \$6.7 billion in additional funds. The most popular mark was the "sin" tax on cigarettes, which was increased in 19 states.

AMENDED BUDGET SURPLUS

Legislation proposing a Constitutional amendment to require a two-thirds majority vote to appropriate state surplus for reasons other than mid-year education adjustments, debt reduction, and/or tax refunds is expected to be introduced.

FUNDING FOR FAITH-BASED CHARITIES

A resolution amending the State Constitution to allow state funding for social services provided by secular organizations may be in the hopper. State prohibitions to religious entities seeking federal funds were removed in the last biennium with statutory changes, but the division between church and state imbedded in Georgia's Constitution requires statewide approval of this initiative at the ballot box. Changes to the State Code will probably define the conditions under which these funds can be used, as well as measures for reporting, accountability, and misuse.

AGRICULTURE

AGRICULTURE PRODUCTION CONTRACTS

Poultry growers complain that contracts with poultry integrators are too restrictive. Although contracts are negotiated, growers contend they are in an inferior negotiating position because the integrators have regional monopoly power. Contract provisions required by the integrator, the one who usually provides the chickens, limits information that growers have available to make decisions. For example, integrators may restrict review of their contract with the grower and prohibit legal representation or may restrict who is allowed to watch the scales when the chickens are returned and weighed. Growers also want more information regarding the chickens' history, since many growers believe the integrator gives them inferior birds. The contracts between a producer and an integrator usually require arbitration instead of litigation. The growers believe the arbitrators favor integrators and that a jury offers a more balanced opinion. During the last session, Senate Bills 489 and 533 that did not pass, provided that no contract shall require binding arbitration as a method of dispute resolution. A third bill that did not pass, Senate Bill 227 titled "The Family Farm Fairness Act," provided that disputes be resolved through mediation by the appropriate commodity commission.

WATER METERING

The Joint Comprehensive Water Plan Study Committee has recommended the "Ground-Water Use Act" and the "Water Quality Control Act" be amended to require persons holding farm use permits to measure and periodically report water use from all agricultural irrigation wells and pumps. Although the Environmental Protection Division currently estimates the amount of water used in the agriculture sector because farm use water permits are exempt from reporting requirements, assumptions about use may make the estimates inaccurate. Included in the recommendation to monitor water use is a provision that a cost-share program be established for the purchase, installation, and maintenance of measurement equipment.

BANKING

PAYDAY LOANS

House Bill 1361, the "Georgia Fair Lending Act," which passed during the 2002 Legislative Session, implemented what is probably the toughest predatory lending law in the nation; however, one important issue not addressed in the legislation is payday loans. The payday loan industry generally consists of check cashing outlets, pawn shops, stand-alone companies, and banks making small sum, short-term, high-rate loans. These loans are called a variety of names: payday loans; cash advance loans; check advance loans; post-dated check loans; or delayed deposit check loans.

In a typical scenario, a borrower writes a personal check payable to the lender for the amount he or she wishes to borrow, plus a service fee. According to the Consumer Federation of America, in a payday loan, sufficient funds to cover the borrower's check are not available when the check is tendered. The check casher agrees to hold the check until the consumer's next payday, usually up to two weeks. At that point, the consumer can either redeem the check with cash or a money order, permit the check to be deposited, or renew the loan by paying another fee and interest. The Annual Percentage Rate varies depending on the fee and how long the check is held before being deposited or redeemed. Consumers sometimes renew the loans over and over again because they cannot afford to pay off the principal and service fees.

Proponents of the payday loan industry say that consumers must have freedom of choice because many, who are short of funds, are faced with severe hardship when dealing with financial emergencies such as medical treatments, rent deposits, and other crucial needs.

Other States

The National Conference of State Legislatures (NCSL) reports that at least 32 states and

the District of Columbia allow payday lending. Generally, it has been exempted from state usury or small loan laws, but lenders must comply with maximum fee, roll-over, and loan size limits. Most states require licensing and periodic examinations to ensure that lenders are complying with applicable federal and state laws.

NCSL also reports that at least 17 states and two territories prohibit payday lending through strict small loan interest rate caps, which make these types of loans unprofitable. Alabama, Alaska, and Rhode Island have set a 36 percent annual interest rate cap on small loans. In these states, a lender can charge only a \$2.77 fee on a \$200 payday loan, instead of the \$30 to \$45 charged in states that allow payday lending without an interest rate cap.

Current Law

Under current Georgia law, the Georgia Insurance Office's Industrial Loan Division is charged with the responsibility of licensing and regulating the small loan industry in the state. These businesses are licensed under the "Georgia Industrial Loan Act," to lend cash to consumers in amounts not to exceed \$3,000, for a period not to exceed 36 months, 15 days.

In October of 2002, Georgia's Insurance Commissioner ordered a chain of metro Atlanta payday loan and check cashing companies to cease and desist making payday loans. The order was based on the fact that the businesses subject to his order do not hold an industrial loan license as required by state law; therefore, these businesses were making loans of \$3,000 or less illegally. The Commissioner's decision came after a hearing in August, which gave the company's officials and loan recipients the opportunity to testify about the financial transactions being conducted by the offices. The companies denied that they were making "loans."

During the 2001 Legislative Session, Senate Bill 17 passed the Senate Banking Committee by substitute. The substitute language provided that any person who makes more than ten loans per year to Georgia residents, or any person who succeeds to all or a partial interest in such loans which are less than \$3,000 each, and who is not licensed to lend money in this state, may not maintain a proceeding related to such loan transactions in any court in Georgia; however, it did not make payday loans illegal.

CIVIL JUSTICE

EMERGENCY COURT OPERATIONS

It is likely that legislation will be pursued to authorize certain judicial officials to adjust court operations when to state or local emergency or other situation inhibits the ability of litigants to comply with time deadlines imposed by statute, rule, or order. Court security and the continuity of court operations are some of the primary concerns of the judicial branch of government in light of the events of September 11, 2001. Other state and local court jurisdictions are similarly establishing emergency procedures. Any legislation in this area necessarily contemplates protection of due process requirements.

CRIMINAL JUSTICE

INDIGENT DEFENSE

The issue of providing adequate legal counsel to indigent defendants continues to generate discussion, particularly in the areas of funding and whether to establish a unified statewide public defender system. In December 2000, then Chief Justice Robert Benham appointed a special commission to examine the status of Georgia's system of indigent defense, develop a strategic plan, and provide a timetable for its implementation. The final report and recommendations of this commission are expected in mid-December of this year.

In May, the United States Supreme Court handed down its decision in the case of *Alabama v. Shelton*, 122 S. Ct. 1764 (2002), striking the use of suspended sentences conditioned upon compliance with terms of probation unless legal counsel is provided to indigent

defendants. Thirty years ago, the Court in *Argersinger v. Hamlin*, 407 U.S. 25 (1972), opined that the Constitutional right to counsel applied to any criminal case, including misdemeanor or other petty offenses, when incarceration could be imposed as all or part of the sentence for the offense. Since suspended sentences or probation are commonly used in minor offenses, problems arise in complying with the Court's holding. Providing counsel for indigents could be an expensive proposition for local governments. The Georgia Municipal Association has formed a task force to examine options with regard to municipal courts.

DEFENSE, SCIENCE AND TECHNOLOGY

“DATA BASE PROTECTION ACT”

Senate Bill 214, the “Data Base Protection Act,” passed the Senate in the 2001 Legislative Session, but stalled in the House. This bill is intended to foster the development of an information market and related investments in information storage, processing and communications systems in Georgia. It establishes limited protections for the owners of databases against unauthorized commercialization and rewards investments of time, money, and effort in the creation of databases.

PRIVACY

Privacy laws protecting consumers and citizens may be strengthened. Legislation may be introduced to require all Internet and non-Internet companies, including state agencies, to provide clear and complete disclosure regarding their use of an individual's personal information. Additionally, companies that change their privacy policies may be required to offer customers the option of being removed from their distribution lists. Other suggestions might include increased penalties for computer hacking, the creation of a Georgia Seal for companies to deter identity theft, and the creation of a State of Georgia Internet Bureau to ensure that the Internet is a safe place to shop.

IDENTITY THEFT SAFE HARBOR

Legislation may be proposed to add a safe harbor for any business which holds personal information and has its security breached. The business will be presumed to have exercised due care if it had in place at the time of the breach an information security policy that complies with minimum statutory criteria.

“CHILDREN’S INTERNET PROTECTION ACT”

Senate Bill 387, “The Children's Internet Protection Act,” passed the Senate and passed out of House committee in the 2002 Legislative Session. This legislation requires all local public school systems and local library boards to establish an Internet safety policy that involves the operation of a technology protection measure that shields against access to visual images which are obscene, depict child pornography, or are harmful to minors. These entities are also required to have in place a policy to report to the local law enforcement agency any Internet sites or bulletin board systems found to contain child pornography and which solicit, entice, or exploit minors in connection with pornographic or sexual conduct activities. School systems and library boards that do not implement an Internet safety policy will risk losing technology funding from the state.

COMPUTER PORNOGRAPHY AND CHILD EXPLOITATION PREVENTION

Senate Bill 432 passed the Senate in the 2002 Legislative Session, and may be re-introduced. Current law makes it illegal to intentionally or willfully utilize or attempt to utilize a computer online service, Internet service, or local bulletin board service to seduce, solicit, lure, entice, or commit any illegal act or conduct that is an unlawful sexual offense relating to a child or someone believed to be a child. The legislation will increase the punishment for this violation from a misdemeanor of a high and aggravated nature to a felony punishable by imprisonment for no less than one nor more than twenty years or by a fine not to exceed \$50,000.00, or both. This bill includes punishment provisions for computer operators and owners, as well.

ECONOMIC DEVELOPMENT

GROWTH MANAGEMENT

Legislation that helps cities with growth management and increases coordination among local and state governments is expected. The bill will contain six features. First, a state policy on growth management that establishes growth management principles will be created and will be the basis for state investment decisions. Second, a coordinating body will be created to ensure consistency with state growth management policy and provide support for local government growth management decisions. Third, local governments want design and financial incentives that promote redevelopment of downtown areas and other activity centers, in-fill developments, new developments near existing infrastructure, and regional solutions. Fourth, local governments want to amend Georgia law to allow them greater ability to manage growth, and to provide support for land use decisions subject to review by the courts. Key institutional stakeholders, development authorities, and school boards will be included in the comprehensive planning process. Finally, training programs and technical assistance will be provided to help local governments create quality environments and promote quality growth.

EDUCATION

CHANGES TO “A+ EDUCATION REFORM ACT”

Education Reform, which passed the legislature in the 2000 Session in the form of House Bill 1187, will most likely see several amendments this session. Those aspects that probably will remain unchanged are school report cards, annual testing, teacher accountability and improving the student- to-teacher ratio in classrooms, many of which are part of President Bush’s “No Child Left Behind Act.”

Those areas that could be changed this session are directed toward giving more control to local educators. Specifically, teachers may be allowed to have more input on issues that directly affect them, such as the development of Criterion Referenced Competency Tests. Another change may include the consolidation of education agencies and their responsibilities under the State Department of Education. Reinstatement of funding for paraprofessionals to improve student-to-teacher ratios will be on the table, as well as a reexamination of the standards used to determine which schools are low-performing schools.

CHARTER SCHOOLS

Charter schools are viewed by many as a way to increase local control over schools. Possible revisions to the current charter school law include a provision for per-pupil operations and facilities funding in an amount equal to a certain percentage of that given for the public school student. This bill could allow for two independent granting authorities, namely the State School Board and local school boards, and encourage the creation of business-education partnerships that focus on providing students with curriculum-based education, as well as teaching them real world work skills.

CAREER AND TECHNICAL INSTRUCTION

There may be legislation on developing a stronger system of vocational and technical instruction to provide an option for students who are not college bound. The focus will be on creating an atmosphere that encourages students to choose a career or vocational tract, and creating programs that provide a mixture of high school classes, technical college courses, and adult education as a new degree option.

HIGH-QUALITY TEACHERS

Attracting high-quality teachers to those districts and schools that are considered low-performing will be a major focus during the upcoming session. Legislation that will provide teachers with an exemption from state income taxes if they agree to teach in low-scoring districts for at least three years will most likely be reintroduced. In addition, teachers in such areas will be encouraged to achieve national board certification status by the continued use of bonuses and other incentives.

HIGHER EDUCATION

BUDGET

The most important concern in the area of higher education will be funding. Both the University System of Georgia and the Georgia Department of Technical and Adult Education are reporting record enrollments for the current school year while at the same time facing, like all state agencies, a decrease in available funds. In the University System, support for the formula, continuing increases in salaries for faculty and staff, and continuation of funding for special initiatives are the key areas of concentration. For the Department of Technical and Adult Education, funding for the formula, replacement of obsolete equipment, and capital outlay needs are the driving concerns behind a request to raise tuition \$1 per credit hour.

EMPLOYEE INFORMATION PRIVACY

A public records exemption for personal information of University System employees, similar to the exemption provided to public school employees in Senate Bill 205 passed during the 2001 Legislative Session, is expected. The information exemption would cover such personal information as an individual's Social Security number, mother's birth name, credit and/or debit card number, bank account information, financial data or information, and insurance or medical information.

ETHICS

LEGISLATORS - LOBBYISTS

A ban on lobbying by ex-legislators and former state officials for a period of two years after they leave office, and prohibitions on lobbyists serving on statutorily-created boards and committees are likely to be dropped in the hopper in 2003.

ETHICS ENFORCEMENT

Creation of an Inspector General to identify mismanagement and corruption in state government, as well as the establishment of a statewide grand jury to investigate corruption at the county and local levels, will likely to be introduced.

FINANCIAL DISCLOSURE

Senate Bill 3, the "Financial Disclosure Reform Act of 2003," has been pre-filed for consideration in the 2003 Legislative Session. As a part of Lieutenant Governor Mark Taylor's legislative package, the bill expands the definition of the term 'public officer' to include any public officer or employee who has any discretionary authority over the selection of a vendor. This legislation includes a provision that requires the Ethics Commission to issue advisory opinions. The legislation requires extensive financial disclosure statements from covered officials and their spouses. It also requires that all statewide elected officials and members of the General Assembly and all lobbyists file financial disclosure statements electronically.

This legislation applies the definition of the term "lobbyist" to persons who receive compensation to influence the selection of a vendor to supply goods or services to any state agency. It does not apply to a person who only participates by preparing a written bid, written proposal, or other document relating to a potential sale to a state agency. The legislation also provides that the required reports filed by lobbyists must be verified and include a description of the expenditures.

PROHIBITION ON LEGISLATORS LOBBYING ON BEHALF OF INMATES

Legislation may be introduced that bans or severely limits lawmakers from contacting state officials on behalf of inmates. According to state records, legislators have made at least 5,500 contacts on behalf of prisoners and parolees since 1998. The practice is widespread, with 81 percent of the state's 2002 legislators having made contact with the parole board.

HEALTH AND HUMAN SERVICES

PRESCRIPTION DRUG BENEFITS

States are considering or have enacted a variety of changes in their Medicaid programs to respond to the challenges arising from increased demand for and higher costs of prescription drugs. Recent state legislation related to Medicaid prescription drugs generally is designed around new or expanded applications of management tools available to states through federal law. Among the strategies receiving legislative attention are the use of: preferred drug lists or formularies; generic substitution; cost-sharing or co-payments; prior authorization; drug utilization review; dispensing fees; ingredient fees; and supplemental rebates from manufacturers. Many legislative initiatives address several Medicaid policy areas simultaneously. Several laws focus on altering the mix of drugs prescribed, either through broadened generic substitution, creation of preferred drug lists (PDL), and/or the use of prior authorization (PA).

The Georgia General Assembly considered, but did not pass, legislation that would allow senior citizens to receive prescription drugs at reduced prices (House Bill 711). Other 2002 legislation that did not pass, but is likely to return, will establish an Rx Program within the Department of Medical Assistance to lower prescription drug prices for the uninsured and underinsured residents of Georgia. Another proposal establishes the Georgia Seniors Prescription Drug Benefit Program within the Department of Community Health to reduce prescription drug prices for residents age 55 or older. Advocates for the elderly are promoting legislation that will authorize the Georgia Department of Human Resources to establish and administer a prescription drug benefit program for older Georgians when money is available.

Although Congress recently failed to pass a proposal to provide drug coverage to Medicare beneficiaries with low incomes or high drug costs, President Bush's Fiscal Year 2003 budget plan proposes an investment of \$77 billion over 10 years to help states pay to expand Medicaid drug coverage to low-income seniors. In January 2002, the U.S. Department of Health and Human Services launched Pharmacy Plus, an initiative that provides federal Medicaid matching funds to states to develop new pharmaceutical assistance programs or expand existing ones. Currently, Florida, Illinois, Maryland, South Carolina, and Wisconsin are approved to participate in the Pharmacy Plus program. Applications are pending in Arkansas, Indiana, Massachusetts, Maine, and New Jersey.

LICENSURE OF ADULT DAY SERVICES

Georgia law does not currently require any licensing or oversight of adult day services providers, although some standards exist for those providers whose program participants pay for the services through government funding; however, a majority of the providers do not receive public funds and have no government oversight. As a result, Georgians who receive adult day services are not guaranteed quality care or competent providers. Advocates for the elderly, including the Council on Aging, support legislation to require providers of adult day services to be licensed and comply with minimum standards to protect the health, safety, and welfare of their consumers. In addition, as funding permits, legislation will authorize the regulatory office of the Department of Human Resources to create and enforce these standards. Currently, Arkansas, Florida, North Carolina, South Carolina, and Tennessee have licensing requirements. Alabama grants approvals, and Mississippi has quality assurance standards.

ALLIED WORKFORCE SHORTAGE

Georgia, and the nation, continue to experience serious shortages of nursing, allied health, and behavioral health professionals. In August 2002, the Healthcare Workforce Policy Advisory Committee of the Georgia Department of Community Health issued its Fiscal Year 2002 Annual Report and Research Findings in a document entitled, *"What's Ailing Georgia's Health Care Workforce."* The Committee is charged with monitoring and addressing issues of the ongoing supply, demand, distribution, mix, and quality of non-physician, health care professionals licensed or regulated by the state. The report's findings show that public sector health care providers, like the Georgia Departments of Corrections and Human Resources, are being forced to operate with vacancy rates at or above 20 percent for nursing positions. Private sector acute and long-term care providers are being forced to spend increasing amounts of money for agency and contract

professionals, and still these programs are operating with vacancy rates ranging from 9 to 15 percent, depending upon the profession.

Within the past year, some progress has been made. Nearly 6,000 registered nurses were licensed in FY 2001, an increase of 9.3 percent over the previous year. Graduation from public social work programs jumped nearly 30 percent in FY 2001. Enrollment in Georgia's public nursing schools increased by more than 15 percent in the past year. This is the first overall increase in enrollment in eight years; however, population growth in general and the aging population drive an increased demand for health services. Overall, Georgia nursing and allied health graduation rates remain at low levels. The supply of health care professionals in Georgia is currently inadequate, and it may not meet the increased level of need forecasted for the near future.

Senate Resolution 428, creating the Senate Study Committee on the Shortage of Registered Professional Nurses, passed during the 2002 Legislative Session. Its purpose is to study and make any legislative recommendations on the issues contributing to the shortage of registered professional nurses: conditions that operate as barriers to licensed nursing practice; seek prescriptive authority; and support for impaired nurse programs.

LEVEL OF CARE SYSTEM FOR PLACEMENT

The Level of Care system is a new policy proposed by the Georgia Association of Homes and Services for Children (GAHSC), in partnership with the Georgia Department of Human Resources, the Georgia Department of Juvenile Justice, the Governor's Task Force for Safe Children, mental health, and community providers. The partnership proposes a system in which a foster child would get a placement based on his/her needs, with services designed to follow the child, whether the child is at home, in foster care, or in a group home placement. Each child will be served in the least restrictive, most family-centered and community-based setting that meets his/her treatment needs. Wrap-around services will support a child in foster care or group home placement.

When an abused or neglected child enters the foster care system, his/her needs will determine the intensity level of services. There are six proposed levels of care, and within each level there are a variety of treatment options and settings to meet each child's unique need for support. Every child is monitored during placement, and their needs are periodically reviewed. Some other states that use a Level of Care Service System are Texas, Kentucky, South Carolina, and Arizona.

CHILD ENDANGERMENT

A potential issue for the 2003 Legislative Session may be whether Georgia should enact a child endangerment law. Georgia is the only state in the nation with no specific child endangerment statute or comparable child abuse felony statute. Georgia has enacted laws that have been used to prosecute criminal acts against children; however, current laws do not create liability for criminal negligence specifically directed toward a child. Current Georgia law requires proof of malice, which is an evidentiary standard that is often difficult to meet in cases relating to breach of custodial duty.

Finally, proponents of the proposed law argue that the only individuals who may be charged are the parent or guardian, and not others who have custody of a child. Critics of a child endangerment statute argue that current law already exists to protect children, and the state cannot define criminal negligence to children without criminalizing accidents.

Senate Bill 1, pre-filed for the 2003 Legislative Session, adds a nonmerger provision for the offense of cruelty to children in the second degree. This offense shall not be merged with a forcible felony, battery, or family violence battery, nor shall the offense be merged into another violation. Any person who is found guilty of the offense of cruelty to children in the second degree will be guilty of a felony and subject to imprisonment for up to 20 years. Senate Bill 1 also provides for the crime of endangerment of a child under the age of 16, and provides for various degrees of endangering a child under certain circumstances.

In addition, a child endangerment statute that will make it easier to prosecute abuse and neglect cases and strictly enforce the “Victims Bill of Rights” related to crimes against children has been touted for legislative attention.

HOME AND COMMUNITY-BASED SERVICES AND LONG-TERM CARE

An historic Supreme Court decision, *Olmstead v. LC* (1999), encourages states to re-evaluate how they deliver publicly-funded, long-term care services to people with disabilities. The court ruled that it is a violation of the “Americans with Disabilities Act” to discriminate against people with disabilities by providing services only in institutions when they could be served in a community-based setting. Each of the following apply: the individuals have the treating professionals’ recommendation for less restrictive placement; the individuals do not oppose the recommended placement; and the state does not have to make fundamental alteration of its services and programs that impact other persons in need of service.

In Georgia, legislators, executive branch officials, consumer advocacy groups, and individual citizens are currently working together to implement the *Olmstead* decision. The Governor’s Office of Planning and Budget is responsible for coordinating state agencies.

In light of the *Olmstead* decision, and in a desire to better serve the senior citizens of Georgia, members of the General Assembly can expect legislation that will provide more alternatives to nursing homes by expanding options for long-term care in Georgia, thus allowing senior citizens to maximize their independence. An increase in funding for home and community-based services and tax credits to seniors may be proposed to help cover the costs of private long-term care insurance. Another facet to enrich the quality of life for seniors would close the loophole that exempts nursing homes from accountability and sanctions requiring greater protection for residents.

INSURANCE

INSURANCE SCORING

Historically, insurance companies have used a consumer's housing information and driving records to underwrite and rate homeowners’ and auto insurance. More recently, insurers also have used an “insurance score” based on a consumer's credit report. This has created controversy among consumer advocates in Maryland, who questioned why an individual's borrowing and bill-paying behaviors would affect their insurance rates. The Maryland Legislature responded with a law (House Bill 521) prohibiting insurers from using credit scores to determine homeowners' insurance rates in that state. Similar legislation was introduced in Virginia but later withdrawn so that more study could be conducted.

Insurance companies contend that credit reporting information can help predict a consumer's likelihood of filing future property and automobile claims. Although over 90 percent of insurers use credit information when underwriting new policies, many consumer advocates believe credit reports should be private and that it is unfair to assume those with poor credit are insurance risks.

MEDICAL MALPRACTICE

When the medical malpractice insurance crisis spread across the nation this past year, the affected states quickly placed liability reform at the forefront of their health care priorities. When a similar crisis arose in the mid-1970s, states responded by enacting tort reform legislation and setting strict limits on non-economic damages. Many of the laws established during this time were ruled unconstitutional because non-economic damages are subjective and unpredictable. The lone exception was California, where lawmakers enacted a measure in 1975 setting a \$250,000 cap on non-economic damages. In addition, California law limits attorneys' fees, and allows discretionary offset of collateral benefits, which keeps the amount of the claim from being excessive. Those seeking similar reforms have viewed the California law as a model for new legislation. Indeed, Nevada’s Assembly Bill 1, passed on August 1, 2002 during a special session of its legislature, and the Federal House Resolution 4600 are modeled after California law.

Today, the health care industry and business community which support further reforms assert that malpractice insurance rates are increasing because of excessive jury awards. States like California that have capped non-economic damages and punitive damages are experiencing lower rate hikes than states that have no damage limits.

However, opponents of medical malpractice legislation contend that insurance companies are increasing malpractice rates to make up for their losses in the stock and bond markets.¹ Moreover, patients who are injured by their doctors or by defective medical equipment should not be denied full compensation for their pain and suffering just to protect insurers' profits. Some also argue that the current malpractice crisis could be addressed if state medical boards turned their attention to the small number of doctors who account for most malpractice cases.

The following issues affecting medical malpractice liability law have been identified as potential solutions by various organizations advocating tort reform:

- Limit Attorneys' Fees: Place a limit on attorneys' fees based on a sliding scale in medical malpractice cases;
- Expert Witness Qualifications: Limit who can testify as an expert, including experts who provide affidavits about a physician's care, to M.D.s who actively practice or teach in the same specialty or area of medicine as the defendant physician;
- Dismissal Rule: Limit the number of times a plaintiff may dismiss his or her case and prohibit dismissals once the jury is selected;
- Comparative Negligence: Require the judge to reduce awards by the percent that a non-compliant patient contributed to his or her injury;
- Joint and Several Liability: Abolish joint and several liability and apportion damages according to the degree of fault attributed to each defendant in a case; and
- Cap on Damages: Place a cap on non-economic damages.

THE UNINSURED

With a stalled economy and rising unemployment, an increase in uninsured individuals could lead to more financial problems for states, including higher costs from the increased reliance on Medicaid and other publicly-funded health programs. Uninsured individuals tend to receive less preventive medical care and to rely more on emergency department care than their insured counterparts. This strains state and local public resources, such as public hospitals and clinics, that provide care to the uninsured. According to the Kaiser Family Foundation, an estimated 1.1 million non-elderly Georgians are uninsured.

States have taken two approaches to increasing coverage for uninsured workers: offering public coverage for workers who are uninsured because they cannot afford premiums; and making private coverage more available, affordable, and attractive to higher income workers. Several states mix these approaches with subsidies to help low-income, uninsured individuals purchase private coverage.

Whether at the federal or state level, coverage expansions over the past decade have been incremental. What exists today in the 50 states and the District of Columbia is a patchwork of programs for low-income and special needs populations. From Medicaid to SCHIP (PeachCare in Georgia) to state-only programs, states have pursued very different paths. In addition to larger public programs, states have also expanded coverage through more targeted approaches such as high-risk pools, employer buy-in programs, and by applying for Medicaid waivers. Waivers allow states to expand coverage to the uninsured by waiving certain laws relating to Medicaid or SCHIP for the purpose of conducting pilot, experimental, or demonstration projects which are likely to promote the objectives of the program. Of note are the new Health Insurance Flexibility and Accountability (HIFA) waivers and 1115 Research and Demonstration waivers. Georgia policy and budget writers

¹Most insurers use the funds collected from premiums to invest in the market and increase their revenue and profit. With the market downturn, many insurers lost revenue and were unable to pay out awards and settlements. As long as the market is doing well, insurers can provide insurance contracts to physicians with relatively low premiums and invest the premiums collected in the stable market for a higher rate of return. Although an insurer may collect less money in premiums than the insurer pays out in claims and settlements, an insurer may still profit every year from investing the premiums in the market.

may seek legislative approval to participate in new federal programs or expand some existing statutes granting high risk pools and/or tax incentives to employers offering coverage.

“GEORGIA HEALTH CARE ACT”

During the last legislative biennium, House Bill 638, the “Georgia Health Care Act,” was introduced to cover people not qualified for Medicaid but whose jobs do not provide insurance coverage. This legislation provides for a state-based health plan that the uninsured can buy into for a small monthly fee similar to PeachCare. The plan, which would be supported with state dollars and monthly premiums, would cover the same services provided under traditional health insurance policies.

“GEORGIA CONSUMER CHOICE NEGOTIATED HEALTH INSURANCE PLAN ACT”

For businesses that do not offer health insurance because of its high cost, legislation to allow health insurers to issue small-group and individual health insurance policies without state mandated benefits is likely to be revisited. The bill allows insurers to provide only the benefits, coverages, and reimbursements for services as may be mutually agreed upon between the group or individual policyholder and the insurer, thus making state-mandated coverage optional with the logic being that any coverage is better than no coverage at all. Any individual policy holder covered within a group plan will be allowed to purchase, at his or her own expense, any additional coverage not selected by the employer for the group as a whole.

JUVENILE JUSTICE

DISCOVERY IN JUVENILE CASES

Last year, House Bill 642, which provided for reciprocal discovery and the inspection of evidence in juvenile cases, passed both the House and Senate Chambers; however, the bill was vetoed by the Governor due to an amendment which shifted the cost of care of a child temporarily placed in the custody of the Department of Juvenile Justice to the department rather than the county of domicile of the child. Governor Barnes’ veto message noted that the estimated cost to the Department of Juvenile Justice would be in excess of \$3.7 million dollars annually, and he encouraged the future passage of the measure without the amendment. It is anticipated that this bill will be introduced again this session.

CHILD SUPPORT

Legislation which would provide the juvenile courts with jurisdiction to order temporary child support for a child where there has been a finding of deprivation under O.C.G.A. § 15-11-2 is expected to be introduced in January.

NATURAL RESOURCES

STATE WATER MANAGEMENT PLAN

The Environmental Protection Division (EPD) plans to codify the recommendations of the Joint Comprehensive Water Plan Study Committee. The first recommendation is to enact legislation to provide for the development and implementation of a comprehensive state water management plan. A Water Planning Branch within the EPD would be responsible for developing the plan, and the creation of a Council on Water that reports to the Governor’s Office would be charged with coordination and communication among state agencies.

WATER OWNERSHIP

The most contentious issue for legislators is water ownership. Specifically, is water a public resource to be administered and allocated by the state in the best interest of the public at large, or is it a private property interest that is subject to sale as a commodity? Georgia’s system of surface water rights is based upon the “Riparian Rights Doctrine.” Two important principles emerge from the “Riparian Rights Doctrine.” First, persons owning land adjoining a river or stream share equal access to the use of the water that flows in the watercourse adjacent to their property. The right to withdraw and use water is tied to the ownership of

land. Second, Georgia court decisions have limited the right of use to a “reasonable” use standard. The system of groundwater rights is more complicated because scientific understanding of water’s movement beneath the earth’s surface has been limited. Interpretations of the limited case law on groundwater suggest that withdrawals below the 100,000 gallon-per-day threshold from an aquifer will be regulated in a manner similar to the Riparian Rights approach and subject to the reasonable use standard.

If water is private property, environmental groups contend water will be less plentiful and more polluted than water managed by the state as a public resource. Local governments are concerned, however, that environmental groups could bring litigation against the State and potentially bankrupt local governments over the mismanagement of water if water is declared a public resource.

EROSION AND SEDIMENTATION

The Environmental Protection Division (EPD) plans to make changes to the “Georgia Erosion and Sedimentation Act” and the “Georgia Water Quality Act.” The legislation will require local erosion and sedimentation ordinances and local Land Disturbing Activity (LDA) Permits to mirror the National Pollutant Discharge Elimination System (NPDES) General Permit by July 2004. Where there is no local issuing authority, LDA Permits will no longer be issued. Mandatory “stop work” orders will be imposed instead of mandatory fines. All builders, developers, general contractors, erosion and sedimentation plan preparers, plan reviewers, and inspectors must be trained and certified within 3½ years; however, the review of erosion and sedimentation plans will not be mandatory for plan preparers that have been trained and certified. The legislation also will provide for additional EPD inspectors funded through an NPDES General Permit fee system.

PUBLIC SAFETY

OFFICER RETIREMENT

The Georgia Department of Public Safety has designated retirement for state law enforcement officers as its top legislative priority. The proposals include allowing any state law enforcement officer to retire after 25 years of service; and allowing members of the Peace Officers’ Annuity and Benefit Fund, who have at least 30 years of creditable service regardless of their age, to become rehired as peace officers without affecting their retirement benefits.

TRAFFIC ENFORCEMENT

Traffic enforcement proposals include authorizing the use of unmarked law enforcement vehicles to perform traffic enforcement. The unmarked vehicles will not have roof lights or agency markings. Additional legislation prohibiting blue lights and white flashing/strobe lights on non-law enforcement vehicles, unless the vehicle has a valid permit from the Department of Motor Vehicle Safety, will be introduced. All Georgia State Patrol (GSP) officers conducting routine traffic enforcement, including those in unmarked law enforcement vehicles, will be required to wear a standard GSP uniform, and impersonating an officer or using a vehicle which appears to be a law enforcement vehicle will be increased to a felony with punishment of a fine of not less than \$1,000 nor more than \$10,000; or imprisonment of up to 10 years; or both.

Driving Under the Influence

Legislation prohibiting anyone to drive with any amount of marijuana and/or controlled substance present in his/her blood or urine is expected. The issue of limiting the scope of DUI license suspension administrative hearings to administrative issues by excluding any issues relevant to the criminal prosecution (i.e. whether the person was lawfully placed under arrest for violating Georgia’s DUI law) will also be revisited. Included in this legislation will be provisions to allow the admission of documentation in lieu of the officer coming to testify at a DUI administrative license suspension hearing. Documentation includes a certified copy of the report, agency records, and a certified copy of the crime laboratory results.

Out-of-State Driver's Insurance

There is law enforcement support to clarify Section 40-6-10(b) of the Georgia Code to ensure that out-of-state drivers may be charged with driving without insurance.

STATE PROTECTION ORDER REGISTRY

Legislation will be requested which specifically outlines the sheriff's responsibilities regarding the Protective Order Registry. The language may state, for instance, that the sheriff is responsible for hit confirmations, periodic validations of protective orders that are successfully transmitted to the National Crime Information Center (NCIC), and the update and cancellation of orders. Language will be added which: clarifies the use of standardized forms and the individual court's ability to modify approved forms for their use; and requires Georgia Superior Court clerks to transfer foreign protective orders to a standardized form or to use an approved miscellaneous form.

GEORGIA FIREARMS "BRADY LAW"

Changes sought in the Georgia Firearms "Brady Law" will require the Georgia Bureau of Investigation to deny the transfer of a firearm if the background check reveals information indicating that the purchaser has been charged with a crime for which, if convicted, will prohibit that person under state or federal law from possessing a firearm. If a final disposition indicating no conviction is received within 30 days from the transaction date, the Bureau shall immediately reverse the denial to an approval, notify federal licensing of the approval, and update the individual's criminal history record accordingly.

STATE SEX OFFENDER REGISTRY

An expansion of the definition of "criminal offense against a minor" to include possessing any material depicting a minor engaged in sexually explicit conduct; and conspiring to transport, ship, receive, and distribute visual depictions of minors engaged in sexually explicit conduct will be advocated. A proposal requiring anyone who has to register under the "Sex Offender Registry Act" to obtain a Georgia driver's license or Georgia identification card within 30 days of moving into this state will be a part of this legislation. Additionally, anyone required to register due to a criminal offense against a minor or a sexually violent offense must report to the sheriff of the county of residence to be photographed every year within 10 days from the anniversary date of the original registration.

CHILD PORNOGRAPHY

Expect the upgrade to a felony for any person to knowingly possess or control any material which depicts a minor engaged in any sexually explicit conduct. Anyone found guilty will be subject to imprisonment for not less than one nor more than 10 years. This offense is currently a misdemeanor under Georgia law.

HIGH-SPEED CHASES

At least five people have been killed in metro Atlanta due to high-speed pursuits since March of 2002. On August 22, 2002, a public hearing was held to discuss public safety issues surrounding high-speed police pursuits and to examine the policies and procedures in place by city, county, and state law enforcement agencies. Many recommendations were offered that may result in legislation, and include: additional training for law enforcement officers regarding police pursuits; a communication system which allows law enforcement personnel from different jurisdictions to communicate with each other via radio; increased penalties for fleeing and/or eluding an officer to include vehicle confiscation and/or forfeiture; requiring every police department to have a written police pursuit policy specific to their geographic location and population; providing additional immunity to law enforcement agencies, which have written police pursuit policies in place, against law suits which stem from damages, injury, or death due to police pursuits; and compilation of statewide statistics on police pursuits to include the officers involved.

SHERIFFS

Plans to present the following legislative proposals affecting sheriffs will probably be

introduced to the General Assembly during the 2003 Legislative Session. Topping the list is a change in the election laws to make the election of the office of sheriff non-partisan. Other legislative recommendations include: requiring any candidate for sheriff to be a certified peace officer at the time of qualifying for office (the certification must be current and the candidate must be in good standing at the time of qualification); prohibiting any sheriff from engaging either directly or indirectly in the private security, private investigation, bail bonding, or wrecker towing business; and increasing the state's per diem to counties which house state inmates from \$20 per day to \$48 per day.

PUBLIC UTILITIES

EMINENT DOMAIN - ELECTRIC POWER LINE SITING

The siting of electric transmission lines is a highly controversial subject in many communities around the country, as well as in several communities in Georgia. Currently, the Public Service Commission (PSC) does not have authority by state law over the need, construction, or siting of these facilities; however, the Commission regularly receives correspondence from citizens and citizen groups opposing the upgrades of existing facilities or new construction. The growing number of citizen groups in Georgia who are opposing the actions of various utility companies has registered the attention of local officials, resulting in moratoriums in various counties and subsequent lawsuits. Legislation filed in during the 2002 Legislative Session would have required oversight from the PSC; however, it did not pass. It is likely to be a topic for legislation again this year.

Authority for the exercise of eminent domain is granted in Article I, Section III, Paragraph I of the Georgia Constitution and derived from the Fifth Amendment of the United States Constitution. Eminent domain has been codified in Title 22 of the Official Code of Georgia, and is defined as "the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good"; however, both the United States Constitution and the Georgia Constitution require that adequate compensation must be paid when private land is taken for a public purpose. Eminent domain, with respect to electric companies, is specifically addressed in O.C.G.A. § 22-3-140. This statute, which was passed in the 2000 Session, states that "any state agency, political subdivision of the state, county or municipality owning or operating... an electrical or electrical line system... is authorized to utilize the declaration method of eminent domain in order to acquire any private property in fee simple or in any lesser interest, including easements, for such systems and purposes, as such method of eminent domain is provided" in the Georgia Code. This legislation expanded an electric company's already present ability to condemn private land in order to supply electricity to communities which do not have access, or uninterrupted access, to electrical power. Under the new statute, title may pass quickly, leaving only the details of the compensation to be determined in court.

STATE AND LOCAL ISSUES

STATE FLAG

During the 2001 Legislative Session, the General Assembly passed House Bill 16 which changed the design of Georgia's state flag. The previous state flag, which flew from 1956 to 2001, incorporated the Confederate battle flag as its dominating feature. The Confederate battle flag still appears on the present state flag, but in a much smaller representation. Legislation may be introduced during the forthcoming session to restore the 1956 flag, the pre-1956 flag which flew from 1879 to 1956 in various forms, or another design.

POLLING PLACES – HOURS OF OPERATIONS

Since 2001, legislation has been introduced that sought to extend the statewide closing time of polling places from 7:00 p.m. to 8:00 p.m. This issue is expected to be addressed again during the 2003 General Assembly.

CREATION OF UNIFORM COUNTY BOARDS OF ELECTIONS AND REGISTRATION

In the previous legislative biennium, Senate Bill 32 was introduced to create a combined board of elections and registration for each county in Georgia. The combined board would be empowered with the authority and duties of the existing election superintendent relating to the conduct of primaries and elections and the board of registrars relating to the registration of voters and absentee balloting procedures. Compensation for members of the board, elections supervisor, clerical assistants, and other employees will be determined by the governing authority of the county.

TAXATION

SALES TAX HOLIDAY

In the 2002 Session, House Bill 1312 passed which allowed for certain items to be purchased on specified dates, tax free. The sales tax holiday is designed to provide relief for parents purchasing school items for their students. The bill provided a tax exemption for certain items such as clothing and footwear \$100 or less, and the first \$1,500 of the sales price of a single purchase of a personal computer and various other computer-related accessories. The sales tax holiday was provided on March 29, 2002 and on August 2, 2002. Because several members wanted to amend House Bill 1312 to make the sales tax holiday a permanent, bi-annual event during the year when parents experience an increase in expenses for their children, sustained interest may bring the topic back for discussion. The items exempt would likely be expanded to include textbooks and band equipment, and the dollar caps on certain items might be reviewed.

PROPERTY TAX REFORM

Senate Resolution 14, stalled during the 2001 Legislative Session, proposed an amendment to the Constitution of Georgia to provide property tax relief to taxpayers. Specifically, the resolution proposed an amendment to “freeze” residential real property values until such property is sold. Property tax values have increased by as much as 60 percent in some counties in the past few years. The current evaluation process for residential property has left many taxpayers owing much higher property tax bills. The initiative to “freeze” residential real property values until the property is sold, protects the homeowner from constant tax hikes.

SENIORS’ TAX RELIEF

In the last General Assembly, House Bill 1313 passed to allow Georgia’s seniors 62 and older to exclude \$15,000 of retirement or unearned income from state taxes; however, many members of the General Assembly wanted to eliminate state income taxes for seniors on all non-wage incomes completely. There continues to be support for the total elimination of state income taxes for seniors on non-wage income as a way of increasing their disposable income for rising health care and prescription drug costs, so legislation may be introduced.

TELECOMMUTING

As part of the overall effort to reduce traffic in the metropolitan Atlanta area and to encourage employers to have employees located around the entire state, financial incentives for telecommuting in the form of tax credits may be proposed.

TRANSPORTATION

TRANSPORTATION BOARD ELECTIONS

Legislators in seven of the thirteen Congressional districts can expect to vote on membership for Department of Transportation seats in January. Positions in Districts 2, 3, 5, 7, 10, 12, and 13 are up for election.

TRANSPORTATION INFRASTRUCTURE FEE

Legislation introducing a Transportation Infrastructure Fee (TIF) as an effort to enhance statewide revenues for transportation improvements and mass transit systems is expected. A 6 percent collection on the retail price per gallon of motor fuel would be used to fund the Local Assistance Road Program (LARP), public bus and rail transit services, and leverage a portion of the state's share for federal matching funds. The TIF legislation incorporates a tax rebate in an amount sufficient to produce no net increase of the tax burden to Georgia residents.